1317

SUPREME COURT OF THE UNITED STATES.

No. ~~107~~ 63.

CORNELIUS SEABURY, PLAINTIFF IN ERROR,

VERSUS

PHILIP SISSON & AL.

ERROR FROM CIRCUIT COURT U. S. FOR THE DISTRICT OF RHODE ISLAND.

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EXEMPLIFICATION OF THE RECORD.

PHILIP SISSON ET AL.
vs.
CORNELIUS SEABURY.

Writ.

RHODE ISLAND DISTRICT, *ss.*

The President of the United States of America to the Marshal of said District, or to his Deputy, greeting:

[L. S.] We command you to summon Cornelius Seabury, of Tiverton, in the county of Newport, in said district, gentleman, a citizen of the State of Rhode Island and Providence Plantations, if he may be found in your district, to answer the complaint of Philip Sisson, Abraham Sisson, Jabez How-

land, andElizabeth Howland, wife of said Jabez, in right of said Elizabeth, Asa M. Lucas, and Pamela A Lucas, wife of said Asa M., in right of said Pamela, Jacob Lyons, and Abigail Lyons, wife of said Jacob, in right of said Abigail, Ezekiel S. Russell, and Phebe S. Russell, wife of said Ezekiel, in right of said Phebe, all of Ithica, in the county of Tompkins, in the State of New York, and citizens of said State of New York, and Holder Sisson, of Portland, in the county of Chataugua, in said State of New York, Cook Sisson, of Warsaw, in the county of Gennessee, in said State of New York, John Tripp, and Susan Tripp, wife of said John, in right of said Susan, both of said Warsaw, Timothy Ingersoll, and Lydia Ingersoll, wife of said Timothy, in right of said Lydia, both of the same Warsaw, Henry Wilbur Sisson, of Bigflats, in the county of Tioga, in said State of New York, Peleg Taber and Hannah Taber, wife of said Peleg, in right of said Hannah, both of Ledyard, in the county of Cayuga, in said State of New York, all citizens of said State of New York, and Thomas Sisson, of Tecumseh, in the county of Lennaway, in the Territory and district of Michigan, a citizen of said Territory of Michigan, at the next circuit court to be holden at Newport, within and for the Rhode Island district, on the fifteenth day of June next ensuing the date hereof, in an action of trespass and ejectment, to recover possession of a certain tract or parcel of land belonging to the plaintiffs, lying in said Tiverton, whereof the plaintiffs was seized as of their own estate as tenants in common, and for that the defendant, with force and arms, at said Tiverton, hath broken and entered the premises and close of the plaintiffs aforesaid, and ejected the plaintiffs therefrom with like force and arms, and still holds them out, and other wrongs to the plaintiffs done, all against the peace, the boundaries and other particulars, as by the declaration to be filed in court will be fully set forth, to the damage of the plaintiffs ten thousand dollars. Hereof fail not, and make true return of this writ, with your doings thereon. Witness, the honorable John Marshall, esquire. our chief justice, at Newport, this twenty-third day of May, Anno Domini, 1831.

BENJAMIN COWELL, *Clerk.*
JOSEPH L. TILLINGHAST &
JOHN WHIPPLE, *Plffs. Att'ys.*

RHODE ISLAND DISTRICT, } *ss.*
Tiverton, May 26, 1831. }

I have summoned the within named Cornelius Seabury, for his appearance at court, as commanded, by reading the within writ in his presence and hearing.

R. B. CRANSTON, *Dep. Marshal.*

Service	$2 00
Travel	80
Copy	50
	$3 30

Declaration.

CIRCUIT COURT OF THE UNITED STATES, } *Rhode Island District, ss.*
June Term A. D. 1831. }

Philip Sisson, Abraham Sisson, Jabez Howland, and Elizabeth Howland, wife of said Jabez, in right of said Elizabeth, Asa M. Lucas, and Pamela A. Lucas, wife of said Asa M., in right of said Pamela, Jacob Lyons, and

Abigail Lyons, wife of said Jacob, in right of said Abigail, Ezekiel S. Russell, and Phebe S. Russel, wife of said Ezekiel, in right of said Phebe, all of Ithica, in the county of Tompkins, in the State of New York, and citizens of said State of New York, and Holder Sisson, of Portland, in the county of Chataugua, in said State of New York, Cook Sisson, of Warsaw, in the county Genessee, in said State of New York, John Tripp and Susan Tripp, wife of said John, in right of said Susan, both of said Warsaw, Timothy Ingersoll and Lydia Ingersoll, wife of said Timothy, in right of said Lydia, both of the same Warsaw, Henry Wilbur Sisson, of Bigflats, in the county of Tioga, in said State of New York, Peleg Taber and Hannah Taber, wife of said Peleg, in right of said Hannah, both of Ledyard, in the county of Cayuga, in said State of New York, all citizens of said State of New York, and Thomas Sisson, of Tecumseh, in the county of Lennaway, in the Territory and District of Michigan, a citizen of said Territory of Michigan, complains of Cornelius Seabury, of Tiverton, in the county of Newport, in said Rhode Island district, gentleman, a citizen of the State of Rhode Island and Providence Plantations, summoned by the marshal in an action of trespass and ejectment, to recover possession of a certain tract or parcel of land belonging to the plaintiffs, lying in said Tiverton, whereof the plaintiffs were seized as of their own estate as tenants in common, and for that the defendant, with force and arms at said Tiverton, hath broken and entered the premises and close of the plaintiffs aforesaid, and ejected the plaintiffs therefrom with like force and arms, and still hold them out. Whereupon, the plaintiffs complain and say, that, at said Tiverton, on the first day of March, A. D. 1826, they were seized and possessed of the premises aforesaid, being a certain farm and tract of land lying in said Tiverton, bounded northerly on a pond sometimes called Big Pond; westerly on said pond, and land now or late belonging to Ezekiel Brownell; southerly on the highway leading *leading* from Newport to New Bedford, by and over the stone bridge; easterly on the boundary line between the States of Massachusetts and Rhode Island and Providence Plantations, and containing about three hundred acres; and being so seized thereof, the defendant thereafter, on the same day, with force and arms, broke and entered the same, and with like force and arms ejected and expelled the plaintiffs therefrom, and still holds them out, all against the peace, and to the plaintiffs' great damage.

And for that the defendant thereafter, on the day of the date of plaintiffs' writ, with force and arms, broke and entered the plaintiffs' other close and tract of land there being in said Tiverton, bounded northerly by a pond; westerly by said pond and land of Ezekiel Brownell; southerly by a highway, and easterly by the boundary line between the State of Massachusetts and the State of Rhode Island and Providence Plantations, and containing about three hundred acres, and being so entered, with like force and arms then and there ejected and expelled the plaintiffs therefrom, and still holds them out, all against the peace, and other wrongs to the plaintiffs then and there did to the plaintiffs' great injury, and against the peace.

To the damage of the plaintiffs ten thousand dollars, as laid in their writ, dated the twenty-third day of May, A. D. 1831.

Wherefore they sue by

J. L. TILLINGHAST &
JOHN WHIPPLE, *their Attorneys.*

And the defendant comes into court, and defends force and injury, when, &c., and says he is not guilty in manner and form as the plaintiffs have declared, and of this, &c. by his attorneys

HUNTER & SEARLE.

And the plaintiffs likewise by their attorney

J. L. TILLINGHAST.

Agreed state of facts in the case Philip Sisson and others, against Cornelius Seabury.

CIRCUIT COURT OF THE U. S.
Nov. Term, 1831.

It is agreed by the parties in said suit, that the facts in said case are as follows, viz.

On the twentieth day of August, A. D. 1775. Thomas Sisson, then of Tiverton, R. I., being of sound mind and competent to make a will, made and duly executed his last will and testament, in the words and figures as set out in the certified copy thereof, marked A, herewith filed as part of this agreement, and admitted as sufficient evidence of the said will, and the probate thereof; and the said Thomas died between the day last named and the twentieth day of January, A. D. 1777, on which day the said will was duly proved, approved, and ordered to be recorded by the court of probate of the said town of Tiverton, as and for the last will and testament of the said Thomas, then deceased, and took effect as such, and the said will and probate are, in all respects, valid and effectual. Philip Sisson, the grandson of said Thomas, named as a devisee in said will, was, at the time of the execution of said will, under the age of twenty one years, and, at that time, and also at the time of the probate of said will, had had no children, and had never been married; but, after the decease of said Thomas, the said Philip went into possession of the lands, tenements, and appurtenances devised to him in and by said will, under and according to said will and the terms of the devise and devises to him therein; the same lands so devised to him, including the premises demanded in this suit, as well as other lands lying in Massachusetts, and remained in possession of the premises demanded in this suit, (being part of the lands so devised as aforesaid to him) under and by virtue of said will and devise, until the twenty-ninth day of March, A. D. 1814, on which day he duly made, executed, and delivered to the defendant the deed marked B, herewith filed and agreed to be a part of this statement, and duly and legally acknowledged the same in manner as appears thereon, under which deed the defendant went into the possession of the demanded premises, and has remained ever since, and still is in possession thereof.

The said Philip Sisson, in January, A. D. 1785, was lawfully married to Susannah Bowen, now Susannah Sisson, by whom he had the following named children, male and female, of his body lawfully begotten in wedlock, viz. Elizabeth, a daughter, since married to Jabez Howland; Hannah, a daughter, since married to Peleg Taber; Thomas, a son; Holder, a son; Susan, a daughter, since married to John Tripp; Abraham, a son; Nathan, a son; Cook, a son; Henry Wilbur, a son; Lydia, a daughter, since married to Timothy Ingersoll; Abigail, a daughter, since married to Jacob Lyons; Pamela A., a daughter, since married to Asa M. Lucas; Philip, a son, and Phebe, a daughter, since married to Ezekiel S. Russell, all which said children of said Philip and Susannah, excepting the said son Nathan, and all

which said husbands of said female children are the plaintiffs in this suit, and now living. The said Nathan died in August, A. D. 1818, intestate and without issue, leaving his said brothers and sisters his heirs at law. The said plaintiffs and the defendant are citizens of the several States, and reside in the several places as stated in the plaintiffs' declaration; and the said children of the said Philip Sisson were born at the several times mentioned in the deposition of said Susannah, marked C, which is admitted, and is to be taken as part of this statement; and all the matters stated therein are agreed to be true.

The said deed to the defendant comprises not only the land demanded in this suit, but a part also of the lands so devised to said Philip, lying in Massachusetts.

The said Philip Sisson, named in said will, and father of the children and plaintiffs aforesaid, died in Indiana, in September, A. D. 1817, and since his decease, the said premises were demanded of said defendant, by Thomas Sisson, one of the plaintiffs in this suit, on the ground that the said Philip, deceased, had but a life estate therein, and caiming title by way of remainder, under said will.

JOSEPH L. TILLINGHAST, *for Plffs.*
NATH. SEARLE, *for Dfdt.*

WILL.—A.

I, Thomas Sisson, of Tiverton, in the county of Newport and colony of Rhode Island and Providence Plantations, in New England, yeoman, being weak in body, but of sound disposing mind and memory, thanks be to God therefor, calling to mind the mortality of my body, and knowing that it is appointed for all men once to die, do make and ordain this my last will and testament, that is to say: principally, and first of all, I give and recommend my soul unto the hands of God that gave it, and my body to the earth to be buried in decent christian burial; and, as touching such worldly estate wherewith it hath pleased God to bless me with in this life, I give, devise, and dispose of the same in manner and form following:

Imprimis. I give and bequeath unto my well beloved wife Phebe Sisson the old part of my dwelling house, and cellar under it, one quarter part of my orchard near the house and gardening privilege, and also a conveniency around the house, and well of water, with the firewood sufficient for her use, cut and carted home to the door; I also give to my said wife one cow and one horse, or more, she to have her election out of my cows and horse kind, with my horse furniture, with twenty pounds lawful money *money*, to be paid her yearly and every year, out of the profits of my estate, by my executors hereafter named; also, I leave all my household goods with my said wife, to use at pleasure. All the above said gifts are to my said wife Phebe, during her natural life or widowhood, which shall first happen, and no longer; all which I give to my said wife in lieu of her right of dower or thirds to my estate, if she see cause to accept it, and no otherwise.

Item. I give and bequeath to my loving grandson Philip Sisson, all my homestead farm and housing thereon standing, lying part in said Tiverton, and part in the township of Dartmouth, in the province of the Massachusetts Bay, with all my other lands and salt meadows and ledge flats in said Dartmouth, to him my said grandson Philip Sisson, and to his male children lawfully begotten of his body, and their heirs forever, to be equally divided amongst them and their heirs forever.

Item. I give and bequeath unto my loving daughter Elizabeth Shearman, and to her son after her, and to his heirs and assigns forever, all my housing and land at Portsmouth, on Rhode Island; I also give to my said daughter my negro woman named Causa, until she is thirty years of age, and no longer.

Item. My said negro woman to be free at the age of thirty years, and at her own disposal.

Item. I give and bequeath unto my loving daughter Sylvester Sears, and my daughter Elizabeth Shearman, and all my grand children that shall survive me, except my grandson Philip Sisson, all my living stock, household goods, money, bill and bonds, and book debts, excepting what I have or shall dispose of by this my will, to be equally divided amongst them; the money, bills, bonds, and notes, to be divided amongst within two years after my decease; the stock of creatures as soon as may be after my decease; the household goods after wife Phebe.

Item. My will is, that my negro girl named Pegg, that now lives with daughter Sylvester Sears, shall there remain until she shall arrive to the age of thirty years, and no longer, and then to be free and at her own disposal.

Item. I give to my said grandson Philip Sisson, my gun, one pair of oxen, one cow and one horse, he to have his choice after his grandmother.

Item. I give to my two grand daughters, namely, Abigail Sisson and Phebe Sisson, and my will is they shall have sufficient house room to live in my dwelling-house with their brother, so long as they remain unmarried, and no longer.

Item. I give and bequeath to my two grandsons Philip Sisson and Paul Shearman all my wearing apparel, to be equally divided between them.

Item. My will is, that my grandson Philip Sisson come into possession of his portion at the age of twenty-one years, and not before. And whereas my son-in law Joseph Shearman now improves my farm, my will is, that he may improve it until my said grandson Philip is to inherit; he, in consideration, to pay his rents in clearing and making said farm better to the satisfaction of my executors, hereafter named, to whose direction I leave it, or otherwise, as they may agree. Notwithstanding what is above written, my will and mind is, that whoever improves my said farm, whether Joseph Shearman or others, that they shall cut and cart the firewood, keep the cow and horse I gave to my wife, winter and summer, fit for use, and to pay the said sum of twenty pounds, lawful money, to my executors yearly, and every year, as specified, in the gift to my said wife.

Item. I give and bequeath to my son-in-law Joseph Shearman all the young negroes born in his house of my negro woman named Causa.

Item. I give and bequeath to grandson Philip Sisson one good feather bed and furniture, also all my farming utensils.

Item. Whereas, upon a review, I find I made no provision in the fore part of this my will to enable executors to pay my just debts and funeral charges, and other necessary charges that may arise, my will is, that all such charges be paid out of my cash or notes, before any division shall be made.

And lastly, I do hereby make, constitute, and ordain my friends and kinsman Beriah Goddard and Lemuel Sisson, executors to this my last will and testament, and do hereby utterly revoke, make null and void all and every other will or wills, legacies and bequests, and executors, by me in any wise heretofore made or named, confirming this and no other to be my last

will and testament. In witness whereof, I have hereunto set my hand and seal, this twentieth day of August, one thousand seven hundred and seventy-five.

Interlined before sealing, page 1st, line 16th, also; line 29th, grand; page 2d, line 5th, son after her and to his; line 11, my; line 16, then; line 28th, my will is they.

Signed, sealed, published, pronounced, and declared by the said Thomas Sisson to be his last will and testament, in presence of us the subscribers.

GEORGE TIBBETS,
EBER DAVIS,
LEMUEL SISSON, junr.

THOMAS SISSON, [L. S.]

A true copy:

N. M. DURFEE, *Prob. Clk.*

The age and offspring of the children of Philip Sisson, and Susannah his wife, is as follows:

Elizabeth Sisson,	born	January	19th, 1786.
Hannah Sisson,	do	May	23d, 1787.
Thomas Sisson,	do	December	15th, 1788.
Holder Sisson,	do	September	27th, 1790.
Suky Sisson,	do	June	11th, 1792.
Abraham Sisson,	do	June	15th, 1795.
Nathan Sisson,	do	January	26th, 1797.
Cook Sisson,	do	October	3d, 1799.
Henry Wilbur Sisson,	do	October	1st, 1801.
Lidia Sisson,	do	January	30th, 1803.
Permelie Sisson,	do	March	16th, 1806.
Philip Sisson,	do	October	5th, 1808.
Phebe Sisson,	do	November	25th, 1812.

NEWPORT, *ss.*

In Tiverton, on the 20th day of January, A. D. 1777, the foregoing instrument was exhibited in town council, was proved according to law, and was approved of; Eber Davis and Lemuel Sisson, junior, two of the above witnesses being engaged according to law, testify and say that they saw the before named Thomas Sisson, the testator, sign, seal, and declare the foregoing instrument to be his last will and testament, and, in his presence, and in the presence of each other, and in the presence of George Tibbets, they set their hands as witnesses thereunto; and that the said George Tibbets, at the same time, set his hand thereto as witness also, and that the said Thomas, the testator, was at that time in his perfect mind and memory, according to the best of their understanding.

Taken in town council on the day aforesaid.

WILLIAM COOK, *Gent. President.*

Witness: WALTER COOK, *Council Clerk.*

PROBATE CLERK'S OFFICE,

Tiverton, Nov. 10*th*, 1831.

I certify the aforegoing to be a true copy taken from page 245, in book No. 4, of probate records for Tiverton.

I also further certify that Philip Sisson has this day requested me to search for the original will of Thomas Sisson, and that said original will is not in this office according to the best of my knowledge and belief.

Witness:

ASA GRAY, *Probate Clerk.*

B.

To all people to whom these presents shall come.

I, Philip Sisson, of Tiverton, in the State of Rhode Island and Providence Plantations, gentleman, send greeting:

Know ye, that I, the said Philip, for and in consideration of the sum of nine thousand dollars in hand before the ensealing hereof, well and truly paid by Cornelius Seabury, of said Tiverton, gentleman, the receipt whereof I do hereby acknowledge, and am therewith fully satisfied, contented and paid, and thereof and of every part and parcel thereof, do exonerate, acquit, and discharge him, the said Cornelius, his heirs, executors, and administrators, forever by these presents: have given, granted, bargained, sold, aliened, enfœffed, conveyed, and confirmed, and by these presents do freely, fully, and absolutely, give, grant, bargain, sell, alien, enfeoffe, convey, and confirm unto him the said Cornelius, his heirs and assigns forever, a certain farm or tract of land situate, lying, and being partly in Tiverton, in the State of Rhode Island and Providence Plantations, and partly in Westport, in the State of Massachusetts, containing, by computation, three hundred and seventy acres three quarters and fourteen rods, and bounded and described as follows, viz. beginning at the southeast corner on the highway, thence N. 9 E. sixteen rods, N. 14 E. four rods sixteen links, N 58 E. one rod five links, S. 76½ E. thirteen rods four links, N. 16½ E. four rods two links, N. 6 E. 88 rods 8 links, due E. 48 rods 17 links, N. 11¼ W. 60 rods 17 links, N. 78¾ E. 2 rods 3 links, N. 12¾ W. 40 rods, N. 76 E. 20 rods, N. 12¾ W. 129 rods, S. 76¼ W. 81 rods to the pond, and thence N. 44¼ W. 19 rods 16 links, N. 1½ W. 4 rods 20 links, N 58½ W. 17 rods 16 links, N. 12½ W. 8 rds., N. 49¾ E. 4 R. 16 Ls., N. 12 W. 5 R. 16 L., N. 53 W. 8 rods, S. 63½ W. 12 R. 18 L., S. 14¾ E. 7 R. 14 L., south 67 W. 9 R. 12 L., N. 47½ W. 19 R., N. 78½ 9. R., S. 88½ W. 4 R. 16 L., S. 74½ W. 11 R., S. 62 W. eight rods 18 L., S 28 W. 18 R. 17 L., S. 26½ W. 6 R. 17 L., S. 32 W. 23 R., S 24¼ W. 14 R., S. 52½ W. 8 R. 22 L., S. 15½ W. 7 R. 17 L., S. 44½ E. 9 R. 12 L. S. 12 E. fourteen rods, S. 7½ W. 11 R. 11 L., S. 37¾ W. 20 R., S. 71½ W. 5 R. 12 links, thence S. 46 E. 28 rods, S. 50¼ E. nine rods, S. 14 E. seventy-three rods, S. 36¾ E. one hundred forty-one acres and fifteen links, S. 5 E. sixty-six rods, to the first bound, and is part of the estate given to me in and by the last will and testament of my grandfather Thomas Sisson, deceased.

To have and to hold the said granted and bargained premises, with all the appurtenances, privileges, and commodities to the same belonging, or in any wise appertaining, to him the said Cornelius, his heirs and assigns forever, to him and his only proper use, benefit, and behoof forever. And I the said Philip, for myself, my heirs, executors, and administrators, do covenant, promise, and grant to and with the said Cornelius, his heirs and assigns, that at and before the ensealing hereof, I am the true, sole, and lawful owner of the above bargained premises, and am lawfully seized and possessed of the same, in my own proper right, as a good, perfect, and absolute estate of inheritance, in fee simple; and have in myself good right, full power, and lawful authority, to grant, bargain, sell, convey, and confirm the said bargained premises, in the manner as aforesaid. And that the said Cornelius, his heirs and assigns, shall and may, from time to time, and at all

times forever hereafter, by force and virtue of these presents, lawfully, peaceably, and quietly have, hold, use, occupy, possess and enjoy the said demised and bargained premises, with the appurtenances, free and clear, and freely and clearly acquitted, exonerated, and discharged of and from all and all manner of former or other gifts, grants, bargains, sales, leases, mortgages, wills, entails, jointures, dowries, judgments, executions, and incumbrances, of what name or nature soever, that might in any measure or degree obstruct or make void this present deed.

Furthermore, I, the said Philip, for myself, my heirs, executors, and administrators, do covenant and engage the above demised premises to him the said Cornelius, his heirs and assigns, against the lawful claims or demands of any person or persons whatsoever, forever to warrant, secure, and defend by these presents.

I, Lucy Sisson, wife of the said Philip, for the consideration hereinbefore mentioned, do, by these presents, remise, release, and forever quit claim to the said Cornelius, all my interest, dower, or power of thirds in the premises.

In witness whereof, we, the said Philip and Lucy, have hereunto set our hands and seals, this twenty-ninth day of March, in the year of our Lord one thousand eight hundred and fourteen.

Signed, sealed, and delivered in presence of
JAMES BURRILL, jr. to signature of P. Sisson. } PHILIP SISSON, [L. S.]
LEM. H. ARNOLD, to sign do.

PELEG TABER, } To the signature of
THOS. DURFEE, } Susannah Sisson. SUSANNAH SISSON, [L. S.]

PROVIDENCE, SC —STATE OF RHODE ISLAND, &c.

At the supreme judicial court begun and holden at Providence, within and for the county of Providence, on the third Monday of March, A. D., 1814, personally appeared Philip Sisson in open court, on this eighth day of the term, being the twenty-ninth day of March, 1814, and before the same court acknowledged the within instrument by him subscribed to be his voluntary act and deed, with his hand and seal thereto affixed.

Witness:

D. LYMAN, *C. J. S. J. Court.*
JEREMIAH LIPPITT, *Clerk.*

NEWPORT, *ss.*

Personally appeared the within named Susannah Sisson, and acknowledged the within instrument to be her voluntary act and deed, this 31st day of March, A. D. 1814, at Tiverton, in said county.

Before me:

THOS. DURFEE, *Jus. Peace.*

BRISTOL, ss., WESTPORT, *March* 31*st*, 1814.

Then personally appeared the within named Philip Sisson, and acknowledged the within instrument by him subscribed to be his free act and deed, hand and seal.

Before me:

ABNER B. GIFFORD, *Justice of the Peace.*

BRISTOL, ss., *April* 14, 1814.

Then received and recorded this deed (with the acknowledgments, &c.) in the 96th book of Land Records, in page 460, &c.

Attest:

JAMES WILLIAMS, *Register.*

Received, April 14th, 1814, 9 o'clock A. M.

JAMES WILLIAMS, *Register.*

Received on file at Tiverton, April the 5th day, A. D 1814, at 45 minutes past one o'clock P. M , and recorded in book of Land Evidence, No. 8, and on pages No. 194, 195, and 196.

PARDON GRAY, *G. Clk.*

C.

In the Circuit Court of the United States in and for Rhode Island District.

Susannah Sisson, a witness produced, sworn, and examined, in a certain cause pending in the circuit court of the United States, in and for Rhode Island district, wherein Philip Sisson and others are plaintiffs, and Cornelius Seabury is defendant, on the part of the plaintiffs, deposeth as follows, viz.

That she is sixty-four years of age, resides in the town of Ithica, in the county of Tompkins, and State of New York; that, on or about the sixth day of January, A. D. 1785, she was lawfully married to Philip Sisson, then of Tiverton, in the State of Rhode Island; that the said Philip was the grandson of Thomas Sisson. formerly of Tiverton, Rhode Island, deceased, and is the same Philip Sisson mentioned in the last will and testament of the said Thomas Sisson, deceased; that the said Philip Sisson, her husband, died in Indiana, in the month of September, eighteen hundred and seventeen; that the said Philip Sisson, deceased, and this deponent, had fourteen children, all of whom were born during the intermarriage of the said Philip with this deponent, to wit: Elizabeth, who was born the 19th day of January, 1786, Hannah, who was born 28th May, 1787, Thomas, who was born 15th December, 1788, Holden, who was born 27th September, 1790, Susan, who was born 11th June, 1792, Abraham, who was born 16th June, 1795, Nathan, who was born 26th of January, 1797, Cook, who was born 3d of October, 1799, Henry Wilbur, who was born 1st of October, 1801, Lydia, who was born 30th January, 1803, Abigail, who was born 3d of July, 1804, Pamela, who was born 16th March, 1806, Philip, who was born 5th October, 1808, and Phebe, who was born 20th of November, 1812.

That her said son Nathan died in the State of Indiana, in the month of August, 1818, intestate and without issue, never having been married; that all the rest of the said children of the said Philip and this deponent are still living.

That the said Elizabeth married Jabez Howland; the said Pamela married Asa M. Lucas; the said Abigail married Jacob Lyons; the said Phebe married Ezekiel S. Russell; the said Susan married John Tripp; the said Lydia married Timothy Ingersoll, and the said Hannah married Peleg Taber, all of whom, with their several husbands, are now living; and that they and the aforesaid surviving sons of the said Philip Sisson, deceased, are the same persons who are named plaintiffs in the above entitled suit, and are the heirs at law of the said Philip Sisson, deceased. And this deponent further saith that the said Philip Sisson (her son) Abraham Sisson, Jabez Howland and

Elizabeth his wife, Asa M Lucas and Pamela his wife, Jacob Lyons and Abigail his wife, Ezekiel Russell and Phebe his wife, reside in the town of Ithica, in the county of Tompkins, and State of New York; that the said Thomas Sisson resides in Tecumseh, in Lennaway county, in Michigan; that the said Holder Sisson resides in Portland, in the county of Chetaugua, State of New York; that Cook Sisson, John Tripp and Susan his wife, Timothy Ingersoll and Lydia his wife, all reside in Warsaw, in the county of Gennessee, in the State of New York; the said Henry Wilbur Sisson resides in Bigflats, in the county of Tioga, and State of New York, and Peleg Taber and Hannah his wife reside in Ledyard, in the county of Cayuga, in the State of New York.

That the last will and testament of the said Thomas Sisson, of Tiverton, deceased, was left in the office of the clerk of the said town of Tiverton; the last time she saw it, was some time previous to the year eighteen hundred and fourteen, when she got a copy of it, as she supposed, from the clerk of the said town; that she has no other knowledge as to where the said will now is, or what has become of it; that she has been enquired of on this subject by her said son Philip Sisson, and that she gave him the above information.

SUSANNAH SISSON.

Subscribed and sworn this 26th day of October, 1831, before me,

A. D. W. BURGES,
First Judge of Tompkins County Courts.

STATE OF NEW YORK, } *ss.*
Tompkins County, }

Before me, Andrew D. W. Burges, first judge of Tompkins county courts, on this twenty-sixth day of October, 1831, personally came the aforenamed deponent Susannah Sisson, and, after being by me carefully examined and *and* cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, gave the foregoing deposition, which was by me reduced to writing in her presence, and by her in my presence subscribed, the same being taken at the request of Philip Sisson, to be used in the trial of an action of trespass and ejectment, pending before the honorable the circuit court of the United States, next to be holden at Providence, within and for Rhode Island district, on the fifteenth day of November, 1831, in which action the said Philip Sisson and others are plaintiffs, and Cornelius Seabury is defendant.

The adverse party not living or being within one hundred miles of the place of caption, and having no attorney to me known within that distance, and not living or being, or having any attorney to me known within this State, was not notified nor present. The said deposition being stated by the party requesting it, and by me believed to be necessary in the trial of said cause, and the said deponent living in Ithica, in the State of New York, at a greater distance than one hundred miles from the place of trial of said action, and being ancient and in infirm health, are the reasons of taking of said deposition. I further certify that I am not of counsel or attorney to either of the parties, nor interested in the event of said cause. So taken, subscribed, and sworn, before me,

A. D. W. BURGES,
First Judge of Tompkins County Courts.

Cost of this deposition—Magistrate $5 00
Witness fees 1 00

Nov. term, 1831; opened in court.

B. C. *Clk.*

RHODE ISLAND DISTRICT, sc.

To Jonathan Borden, of Tiverton, greeting.

You are hereby required, in the name of the President of the United States, to make your appearance before the circuit court of the United States, holden at Providence, within and for Rhode Island district, on the 15th day of November instant, to give evidence of what you know relating to an action of trespass and ejectment then and there to be heard and tried, between Philip Sisson and others are plaintiffs, and Cornelius Seabury. Hereof fail not, as you will answer your default under the penalty of the law, in that behalf made and provided.

Dated at Providence, the 15th day of November, A. D. 1831.

BENJA. COWELL, *Clerk.*

25 paid by J. L. T.

R. I. DISTRICT, sc., *November 15th*, 1831.

Then summoned the within named Jonathan Borden by reading the within in his hearing.

B. ANTHONY, *Marshal.*

Service - - -	$0 50
Twenty-five miles' travel	1 25
	$1 75

Judgment of court, November term 1832, in the suit Philip Sisson and others *vs.* Cornelius Seabury. This case being called for trial, and the statement of facts in the cause being read and understood, it is considered by the court here that the plaintiffs have and recover of the defendant the possession of the premises demanded and sued for in the plaintiffs' declaration mentioned and described, and also his costs of suit taxed at.

Witness,

B. COWELL, *Clerk.*

Defendant prayed a writ of error as follows:

CIRCUIT COURT OF THE UNITED STATES, } *ss.*
District of Rhode Island, }

In the case Philip Sisson and others, plaintiffs, against Cornelius Seabury, defendant.

To the honorable John Pitman, Judge of the United States' District Court for the District of Rhode Island.

The said Cornelius respectfully represents, that, at the last November term of said circuit court, judgment was rendered against him in said cause in favor of the plaintiffs, which judgment is erroneous against law, and ought to be reversed. Wherefore your petitioner prays your honor to allow a

writ of error in said cause, returnable to the next term of the Supreme Court of the United States, which commences on the 2d Monday of February, A. D. 1833.

R. W. GREENE,
Attorney to said Seabury.

Dated December 4, 1832.

The undersigned consent that the writ of error applied for as above, in the case of Philip Sisson against Cornelius Seabury, may issue, and that the same shall operate as a supersedeas of execution in the same manner as if the writ of error had issued within ten days from the rendering of the judgment in said cause.

J. L. TILLINGHAST, *Plaintiffs' Attorney.*
JOHN WHIPPLE, Do. Do.

RHODE ISLAND DISTRICT, *December 26th*, 1832. } *sc.*

Let a writ of error issue as is above prayed for.

JOHN PITMAN,
District Judge U. S. for Rhode Island District.

RHODE ISLAND DISTRICT, *sc.*

Clerk's Office United States' Circuit Court, in Providence, January 10, 1833.

I, Benjamin Cowell, clerk of the circuit court of United States within and for the Rhode Island district, do hereby certify the preceding to be a true transcript of the record in the case of the said Philip Sisson and others against Cornelius Seabury, which transcript has been examined and compared with the original record, here in this office remaining, by me.

In testimony whereof, I have hereto set my hand, and affixed the seal of said court, at Providence, in said Rhode Island district, this tenth day of January, A. D. one thousand eight hundred and thirty-three.

I also certify that a bond securing the plaintiffs' costs has been given, and approved by the District Judge, and is now on file in this office.

[L. S.] BENJAMIN COWELL, *Clerk.*

RHODE ISLAND DISTRICT, *sc.*

The President of the United States to the Marshal of said District, or to his Deputy, greeting:

Whereas, in a certain suit heard and determined at the last term of the circuit court of the United States holden at Providence, within and for said district, on the 15th day of November last, wherein Philip Sisson, Abraham Sisson, Jabez Howland, and Elizabeth Howland, wife of said Jabez, in right of said Elizabeth, Asa M. Lucas, and Pamela A. Lucus, wife of said Asa M., in right of said Pamela, Jacob Lyon, and Abigail Lyon, wife of said Jacob, in right of said Abigail, Ezekial S. Russell, and Phebe S. Russell, wife of said Ezekiel, in right of said Phebe, all of Ithica, in the county of Tomp-

kins, in the State of New York, and citizens of said State of New York, and Holden Sisson, of Portland, in the county of Chataugua, in said State of New York, Cook Sisson, of Warsaw, in the county of Genessee, in said State of New York, John Tripp, and Susan Tripp, wife of said John, in right of said Susan, both of said Warsaw, Timothy Ingersoll, and Lydia Ingersoll, wife of said Timothy, in right of said Lydia, both of the same Warsaw, Henry Wilbur Sisson, of Bigflats, in the county of Tioga, in said State of New York, Peleg Taber, and Hannah Taber, wife of said Peleg, in right of said Hannah, both of Ledyard, in the county of Cayuga, in said State of New York, all citizens of said State of New York, and Thomas Sisson, of Tecumseh, in the county of Lennaway, in the Territory and District of Michigan, a citizen of said Territory of Michigan, were plaintiffs, and Cornelius Seabury, of Tiverton, in the county of Newport, in said district, gentleman, a citizen of the State of Rhode Island and Providence Plantations, as defendant, a judgment of court was rendered for the said plaintiffs in said suit. And whereas a writ of error has since been granted, on the petition of said defendant, to carry said cause before the Supreme Court of the United States, you are therefore hereby commanded to notify the said Philip and others, or Joseph L. Tillinghast, their attorney of record, to appear before the said Supreme Court of the United States, next to be holden on the second Monday of January instant, to make answer thereunto if they think proper.

Given under my hand, this eighth day of January, A. D 1833.

JOHN PITMAN,
District Judge U. S. for Rhode Island District.

UNITED STATES OF AMERICA, *Rhode Island District,* } *sc.*

PROVIDENCE, *January* 11, *A. D.* 1833.

I have this day made service of the within by reading the same in the presence and hearing of the within named Joseph L. Tillinghast, Esq. (the attorney on record,) as commanded.

CHARLES F. SEARLE, *D. Marshal for R. I. Dist.*
Fees service $2 00

RHODE ISLAND DISTRICT, *sc.*

The President of the United States to the Judges of the Circuit Court for the First Circuit within and for the Rhode Island District, greeting:

Because, that, in the record and process, and also in the rendering of judgment in a suit before you, or some of you, between Philip Sisson, Abraham Sisson, Jabez Howland, and Elizabeth Howland, wife of said Jabez, in right of said Elizabeth, Asa M. Lucas, and Pamela A. Lucas, wife of said Asa M., in right of said Pamela, Jacob Lyons, and Abigail Lyons, wife of said Jacob, in right of said Abigail, Ezekiel S. Russell, and Phebe S. Russell, wife of said Ezekiel, in right of said Phebe, all of Ithica, in the county of Tompkins, in the State of New York, and citizens of said State of

New York, and Holden Sisson, of Portland, in the county of Chataugua, in said State of New York, Cook Sisson, of Warsaw, in the county of Genessee, in said State of New York, John Tripp, and Susan Tripp, wife of said John, in right of said Susan, both of said Warsaw, Timothy Ingersoll, and Lydia Ingersoll, wife of said Timothy, in right of said Lydia, both of the same Warsaw, Henry Wilbur Sisson, of Bigflats, in the county of Tioga, in said State of New York, Peleg Taber, and Hannah Taber, wife of said Peleg, in right of said Hannah, both of Ledyard, in the county of Cayuga, in said State of New York, all citizens of said State of New York, and Thomas Sisson, of Tecumseh, in the county of Lennaway, in the Territory and District of Michigan, a citizen of said Territory of Michigan, were plaintiffs, and Cornelius Seabury, of Tiverton, in the county of Newport, in said District, gentleman, a citizen of the State of Rhode Island and Providence Plantations, defendant, in an action of tresspass and ejectment, a manifest error has intervened to the great damage of the said defendant, as is in his complaint been stated. And it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf.

You are, therefore, hereby commanded, that, if judgment thereof be given, there under your seal, you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them and this writ, so that you have the same before the chief Justice and the Associate Justices of the Supreme Court of the United States, next to be holden at the city of Washington, on the second Monday of January, instant: that, the record and process aforesaid being inspected, they may cause to be done what of right and justice ought to be done in the premises.

Witness, the honorable John Marshall, Chief Justice of the Supreme Court of the United States, this seventh day of January, in the year of our Lord one thousand eight hundred and thirty-three, and in the fifty-seventh year of our independence.

BENJAMIN COWELL,
Clerk U. S. Circuit Court R. I. District.

Allowed this 8th January, A. D. 1833.

JOHN PITMAN,
District Judge U. S. for Rhode Island District.